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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,378	10/30/2003	Augusto A. Picozza	Sunhpro-2-4244	3020

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EXAMINER

ALIMENTI, SUSAN C

ART UNIT

PAPER NUMBER

3644

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/699,378

Applicant(s)

PICOZZA ET AL.

Examiner

Susan C. Alimenti

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4-7,10-15,19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-7, 10-15, 19, and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC §§ 102 & 103*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4, 6, 7, 13-15, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by or in the alternative under 103 U.S.C. 103(a) as being obvious over Pangle (US 4,364,142).

Pangle discloses an animal sweat scraper comprising a core 12 made of a resilient material, such as plastic (col.2, lns.23-25), defining an elongated scraper blade 16 and having a scraper surface 20, and a handle 14 extending from one end of said blade area. A sheath 13 made of a second resilient material such as a neoprene elastomer (col.2, lns.51-54), and defining a pair of V-shaped scraper blades 13 on each side of core 12 (Figure 4). The blade tip is defined as the edge of blade 16 farthest from the point where handle 14 is attached to blade 16.

The blade 16 is considered to be longitudinally curved along its length in that the side surfaces are curved to create rounded edges, said edges extending along the longitudinal sides of

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said blade. If one were to argue, however, that Pangle's blade is not longitudinally curved along its length it would have been obvious to one having ordinary skill in the art at the time the invention was made to change the shape of Pangle's blade member to be longitudinally curved along its length in order to be more ergonomically formed, since it has been held that there is no invention in merely changing the shape of an object without changing its function except in a design patent. *Eskimo Pie Corp. V Levous et al.*, 3 USPQ 23.

Regarding claims 4, 6, and 7, the first resilient material is a polymer and the second material is an elastomer or rubber, which is softer than the first material.

Regarding claims 13, indentation 18 creates a trough shaped elongated blade.

Regarding claims 14 and 15, sheathe 13 interlocks in groove 16.

Regarding claim 19 the blades created by sheath 13 are considered to be parallel to one another.

Finally regarding claim 20, the blade is substantially consistent width throughout.

4. Claims 5, and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pangle.

Pangle discloses the claimed device except the specific rubber or plastic is not positively disclosed, Pangle only noted that suitable elastomers and plastics may be used. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use thermoplastic vulcanite, or ethylene propylene diene monomer rubber and a polypropylene as these are readily available elastomers/polymers, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

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***Response to Arguments***

Applicant's arguments with respect to claims 1, 4-7, 10-15, 19, and 20 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 571-272-6897.

The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Susan C. Alimenti



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